

The Clerk

Equalities, Human Rights and Civil Justice Committee

The Scottish Parliament

*By email*

21 April 2025

Dear Clerk,

**RELATIONSHIP BETWEEN THE EQUALITY ACT 2010 AND THE GENDER  
RECOGNITION ACT 2004**

We are submitting this note, in the light of the letters issued by the Convener to For Women Scotland and others on Thursday evening. We assume that the Committee is planning to consider in some way the Supreme Court judgment issued on Wednesday last week.

In the absence of specific questions in those letters about the contents of the judgment, this note is concerned with the handling of discussions about the interaction of the Gender Recognition Act 2004 and the Equality Act 2010 by the Committee during the passage of the Gender Recognition Reform (Scotland) Bill in 2022. The contents will be familiar to the Convener and Deputy Convener, who were Committee members at the time, and to Pam Gosal MSP, but may be useful for other members not on the Committee at that point.

We strongly recommend that in the light of the Supreme Court having reached a final judgment here, and some of the reaction to it, that the Committee now takes time to reflect on its handling of this issue in relation to the Bill.

From the start, the Committee had material before it that made it clear the effect of GRCs under the Equality Act deserved its careful attention. A series of subsequent decisions in the courts have underscored this.

Interaction of the Equality Act and Gender Recognition Act: decisions in the courts

The decision last week by the Supreme Court overturned two previous decisions in the Court of Session in Scotland. From July 2022 the Scottish Government, initially supported by the Equality Network, pursued through the courts the argument that a Gender Recognition Certificate (GRC) is effective under the Equality Act.

The interaction between these two pieces of legislation was a key issue, although not the only one, in the rationale for the order under Section 35 of the Scotland Act

1998 made in relation to the Bill in January 2023. The Court of Session upheld that making the Order was a reasonable use of the powers by the Secretary of State for Scotland.

### Responses to the Scottish Government (SG) consultation

The [analysis of responses](#) to the second SG consultation published in September 2021 noted:

‘It was often argued that the consultation paper fails to address the interaction between self-declaration of gender and protection of single-sex spaces under the Equality Act (2010)’ (para 2.28);

‘It was suggested that the EQIA does not engage systematically with questions on the implications of reform of the 2004 Act for operation of the Equality Act and does not clearly set out the evidence that the Scottish Government has considered in coming to the conclusion that there is no negative impact on women’s equality and rights.’ (para 7.19); and

‘With respect to operation of the single-sex exemptions available under paragraph 28 of schedule 3 of the Equality Act it was argued that, once a person has changed their birth certificate, there is no way for an organisation to distinguish between those who were or were not born female. Further, it was suggested that organisations may worry about their right to ask if a person holds a GRC, and it was noted that it will not be an offence for a person to make a misleading statement about their own GRC status.’ (7.31)

### Written submissions to the Committee at Stage 1

The Committee received detailed submissions which highlighted the potential interaction of a GRC with the Equality Act as an issue requiring careful attention.

Our own highlighted this issue:

‘The Scottish Government believe that reform based on self-declaration will not affect who can access to single sex spaces. This position rests on the belief that GRCs have no effect under the Equality Act 2010. Their view is contrary to the UK Government and the EHRC and also at odds with the Scottish Government’s revised guidance for the Gender Representation on Public Boards Act 2018, which asserts that “where a full gender recognition certificate has been issued to a person that their acquired gender is female, the person's sex is that of a woman”. Both positions cannot be right, and it is likely that case law will be needed to settle this disagreement. These conflicting positions are outlined here: <https://murrayblackburnmackenzie.org/2022/03/07/making-law-in-the-dark/>’ (para 9)

For Women Scotland [gave this response](#) to the Committee’s question on how the Bill could be amended:

‘Clarify that a GRC does not mean a person is entitled to the single-sex spaces of the opposite sex.

The Government has said on numerous occasions that it supports single-sex spaces and services provided for by the Equality Act 2010 so it would be helpful if it would follow through and make this statement on the face of the Bill. As per the ruling in *For Women Scotland v The Scottish Ministers* the definitions for “woman” and “sex” are biological and “Provisions in favour of women, in this context, by definition exclude those who are biologically male.” The recent EHRC guidance confirms that, where justified, all men can be excluded from a women-only space, even those who hold a GRC.’

[Sex Matters](#) similarly suggested ‘An amendment could be introduced to clarify that a GRC does not change a person’s sex for the purpose of the Equality Act.’

Many others made similar points.

Unfortunately, the Committee did not summarise the many hundreds of longer submissions it received, only the larger number who had replied using its short pro forma. Of these, 59% of respondents were critical of the Bill. The [summary of responses](#) listed ‘The ‘erosion of women’s rights’ as a particularly significant concern, with respondents noting the Bill contradicts aspects of the Equality Act and erodes “safety, privacy, dignity, and opportunities for women.”’

**There is therefore no doubt that, from the start, the Committee had material before it that made it clear the effect of GRCs under the Equality Act deserved its careful attention.**

#### Oral evidence at Stage One

The Committee’s choice of witnesses to the Bill was heavily skewed towards those who supported the Bill (see [here](#) and [here](#)). These witnesses persistently dismissed and played down the importance of a GRC in obtaining access to single sex spaces and provision under the Equality Act.

For example, at the Committee’s [first evidence session on 17 May](#), which began the morning after the deadline for written submissions, Colin MacFarlane of Stonewall Scotland said:

“It is crucial to point out, as I did in my opening statement, that the Gender Recognition Act 2004 has no impact on the Equality Act 2010... Nothing changes around single-sex spaces, single-sex exemptions or the Equality Act 2010. That will remain the same.”

Mhairi Crawford of LGBT Youth Scotland added:

“All that I can say, as a woman, is that the bill is about a piece of paper—a birth certificate. It is not about the Equality Act 2010. Actually, the single sex provisions in that act are not up for discussion, because it does not impact on the gender recognition certificate.... The bill does not open up the Equality Act 2010 for discussion. The single sex provisions remain. If you are looking at the gender recognition certificate, please remember what we have talked about: trans people have come out and lived in their true gender, often for years, so a bit of paper makes absolutely no difference to them accessing single-sex spaces and does not affect any of those rights.”

According to Vic Valentine of Scottish Trans Alliance:

“In terms of how the law works and how decisions are made within the confines of the Equality Act 2010, nothing will change by changing how a person can apply for gender recognition.... I do not know the details of how the equivalents of the Equality Act 2010 and the Gender Recognition Act 2004 interact in other parts of the world. As far as I am aware, in most places, it is similar to how it is in Scotland: the two things are separate, and how you make decisions about service provision, and who is or is not included at a given time, does not directly correlate with how you allow trans people to update the sex that is recorded on their birth certificate and have gender recognition of how they are living.”

These statements were accepted with little probing.

Witnesses who argued the interaction of the two Acts was potentially a major issue, including ourselves and For Women Scotland, were subject to far more demanding questioning, in which leading members of the Committee sought not to draw out and expand on the issues, but to close them down.

The two Committee members who took this question seriously have placed on the record their experience of being on the Committee<sup>1</sup>,

‘[the Committee was] our Parliament at its worst... The committee stacked up the evidence it wanted to include, and almost everything and everyone who didn’t fit with the government view was limited using any means possible. In many cases, conclusions were reached before evidence had been heard.... Away from the public eye, my colleague Rachael Hamilton and I were repeatedly shut down when we raised concerns about the scrutiny of this legislation.... When we objected to the committee’s approach, we were shouted down. We were outvoted without any meaningful debate.’ (Pam Gosal MSP)

‘At the committee stage, we were assured evidence would be taken from every available expert. Words like ‘inclusive’ and ‘open’ were regularly used. But all of that was just a smokescreen. In reality, the committee was hellbent on shutting down any scrutiny and calling a very selective list of witnesses who would say the right things and dismiss any criticism as unfounded.... The consequence was that the evidence we heard at committee was allowed to be stacked in one direction. The process was dictated firmly, designed to limit the amount of time for dissenting voices. A litany of lobby groups with a very one-sided agenda were allowed to shape and mould the bill however they saw fit...’ (Rachael Hamilton MSP)

The Committee was offered the opportunity to speak to a group of women about why single sex provision mattered so much for survivors of violence against women, and therefore why this issue mattered so much to resolve. The Committee rejected this, taking three months to invite the women to put their comments in writing.

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<sup>1</sup> Extracts from Chapter 20, *The Women Who Wouldn’t Wheesht*, Constable (2024), eds. Susan Dalgety and Lucy Hunter Blackburn.

The [Scottish Government](#) witnesses deflected questions about the interaction of the two Acts by giving ambiguous responses that confused the point with the definition of sex with the protected characteristic with gender reassignment.

[Scottish Government Bill team official] : “On that specific point, it is really not clear what the EHRC’s concern is, given that the Equality Act 2010 is obviously UK legislation and is not framed around whether there is possession of a GRC. It is not immediately clear why changing the process for obtaining a GRC would change how the 2010 act operated. It would be helpful for the EHRC to explain that more.”

Shona Robison: “We just need to understand what the EHRC’s concern is, because the rights of transgender people across the UK are enshrined in the Equality Act 2010, whether or not someone has a GRC. The fact that we are changing the process for obtaining a GRC does nothing to alter those fundamental rights that are enshrined in the 2010 act, so we do not understand the relevance, really. Those rights exist no matter what process a country has for obtaining a GRC...”

Shona Robison: “The different systems are just the processes for obtaining a GRC. The fundamental rights that protect transgender people, which are reserved under the 2010 act, remain the same. They will be the same on the day before the bill becomes legislation and on the day after it becomes legislation—if it does, as I hope it will. There is no change to any of those provisions in the 2010 act. That is why we have written back, asking for clarification of what the EHRC means, because we do not understand what it means...”

Shona Robison: “I have tried to speak as much about what this bill does not do as I have spoken about what it does. I have said many times that the bill has no impact on the Equality Act 2010. It could not have, because the 2010 act is reserved, and we would not want it to, because we think that the exceptions are important.”

### EHRC correspondence about the Bill

The EHRC expressed concern about the potential interaction between the Equality Act and the Bill, in correspondence with the Scottish Government, that ran over the course of the Bill process. It stressed its view that if a GRC changed a person’s sex for the purposes of the Equality Act (as the Scottish Government was arguing in parallel in the courts), then the large increase in the number of GRC holders the Scottish Government envisaged (around ten times the number) and the change in the composition of that group, once it was not limited to those with a diagnosis of gender dysphoria, was relevant to the operation of the Equality Act. It raised similar points to those which were cited by the Secretary of Scotland in his reasons for the s35 Order. The Committee saw all of this correspondence.

### Stage One Report

The Stage One report was published in October 2022. By this time, the Scottish Government had decided to defend its argument that a GRC changes a person’s sex

under the Equality Act in the Court of Session, in the first round of the case decided last week in the Supreme Court.

The report of the Committee reflects the cursory treatment that the majority of members were inclined to give this issue. It says only that:

‘472. The majority of the Committee believes that the concerns raised, while recognising that such views are sincerely held, go beyond the scope of the provisions in the Bill, and is satisfied that the Bill itself will not change any of the protections or definitions set out in the Equality Act 2010, including the ability to exclude trans people from single-sex services where proportionate and appropriate. The majority is satisfied that the Bill will not change or remove women’s rights, make changes to how toilets and changing rooms operate, redefine what a man or a woman is, nor change or expand trans people’s rights. The majority is satisfied that the Bill will not change the effect of a GRC, which is that the individual is legally recognised in their acquired gender.’

Pam Gosal MSP and Rachael Hamilton MSP took the unusual step of insisting on including minority comments, where they recorded their concern about the Committee’s failure to deal with the issue of the interaction with the Equality Act properly:

‘473. A minority of the Committee is not persuaded that the risks have been examined sufficiently and disagrees with the decision to frame these issues as separate from the Bill. They take the view that how acquiring a GRC affects a person’s definition and rights under the Equality Act 2010 and believe that this is a central issue in determining what impact the Bill might have on women and girls and seeks clarification on that from the Scottish Government.’

## Stage Two

The [substantive hearing](#) on the first round of the judicial review took place in the Outer House of the Court of Session on 9 and 10 November. At this, counsel for the Scottish Government argued that a GRC changes a person’s sex for the purposes of the Equality Act.

The Committee’s Stage 2 proceedings took place on 15 and 22 November.

Any amendments which sought to put beyond doubt that a Gender Recognition Certificate issued under the new Scottish rules would not have any effect under the Equality Act were ruled out of scope by the Committee Convener, who had the discretion to allow this issue to be discussed, but chose not to.

An amendment referring to the Equality Act was accepted, with government support, which had no useful effect at all. As we noted ahead of Stage 2, the only useful amendment here would have been one that made it clear (as the Supreme Court now has) that “for all purposes” under the Gender Recognition Act does not include for the purposes of the Equality Act:

‘Less clear alternatives, such as saying the Gender Recognition Reform (Scotland) Act has no effect on the Equality Act, are no use here. The same is true of general statements that state nothing in the GRR(S) Act changes the

Equality Act. Any amendment that raises further questions about what it actually means in any practical context only introduces more vague statements into an area already dogged by a lack of clarity and contested readings.

General declamations about the Equality Act will not give providers the clarity they need to be confident in making policy and communicating it to front line staff, or to frontline staff applying it.’ ([MBM blog](#) 31 October: *Amending the Gender Recognition Reform Bill: how to clarify the relationship with the Equality Act 2010*)

### Stage Three: Response to first ruling in Court of Session

On 13 December 2022, [the Outer House ruled](#) (in what is sometimes known as the Haldane judgment) in favour of the Scottish Government, that a GRC changed a person’s sex for the purposes of the Equality Act.

Stage 3 of the Bill took place in the Chamber between 20 and 22 December. The Committee Convener and Deputy Convener took no action to alert MSPs at Stage 3 to the significance of the court’s decision for the Bill. An attempt by Committee member Rachael Hamilton MSP to have an emergency debate at Stage 3 about the relevance of the judgment to the Bill, using the manuscript amendment procedure, was rejected. She received no support from the Committee Convener.

### Subsequent events

It remained the Scottish Government position that a GRC changes someone’s sex for the purpose of the Equality Act, until the judgment last week.

The judgment was specifically concerned with the effect of a GRC. Contradicting its advice during the Bill that a GRC was not relevant under the Equality Act, or to access to services, the Equality Network issued a statement on 16 April which said:

‘The Court appear to have prioritised a nit-picking approach to their interpretation of the exact wording of the legislation, over what was the clear intention of Government and Parliament in passing it. The UK Government stated clearly back in 2004 that the Gender Recognition Act was intended to change a person’s legal sex for the purposes of equality law.

‘The Gender Recognition Act came into being as a result of a European Court of Human Rights ruling more than 20 years ago that required the UK to establish a legal route to gender recognition. Legal gender recognition is a widely-recognised right supported by the UN and international human rights law. This judgement appears to have limited the scope of gender recognition so that trans people’s gender will no longer be recognised in many circumstances. No-one should celebrate a decision that takes a group of people’s human rights away...

Trans people need to be able to recover on hospital wards, use toilets, go swimming and access services just like anyone else. This judgement seems to suggest that there will be times where trans people can be excluded from



both men's and women's spaces and services. It is hard to understand where we would then be expected to go - or how this decision is compatible with a society that is fair and equal for everybody.'

### Relationship with Scottish Parliament LGBTI+ Cross Party Group

We note, again, the undeclared links between Committee members and lobbyists for self-identification through the Scottish Parliament [LGBTI+ Cross Party Group](#), which is [on record](#) as wishing to 'increase activity as a pressure group within the parliament' (these relationships are documented [here](#)).<sup>2</sup>

### The Committee's current task

The Committee Convener wrote to a selection of groups on the evening of Thursday 17 May, at the start of the Easter Bank Holiday, for their response to the judgement. The letter did not ask any questions that demonstrated direct engagement with the substance of the judgment. It gave the respondents three working days to respond. The letter to FWS, the only volunteer group, uniquely omitted a statement in which the Convener appreciated that this deadline might not allow time for a full response.

We note that the Equality Network, which was involved only in the first round of the case was contacted. The Convenor did not contact Scottish Lesbians, which intervened in the Supreme Court case, with the Lesbian Project and LGB Alliance. Nor did it contact Sex Matters, or Amnesty, who also intervened.

If the Committee now wishes to make a constructive, considered, evidence-based contribution here, aimed at driven neither by the desire to promote the line of government or interest groups which support the principle of gender self-identification, then it should first ask itself:

1. Why the majority of the Committee not only failed to identify the interaction of the Equality Act and the Gender Recognition Act as a critical matter for the Bill, but actively dismissed this as a relevant issue?
2. How Ministers could so easily obscure to the Committee the position they were arguing in the courts?
3. Why the Committee failed to extract from the Equality Network its position on the importance and effect of GRCs under the Equality Act, as now set out in its response to Supreme Court ruling?

In doing any further work here, the Committee needs to ensure that it is contacting all the appropriate organisations, showing no partiality in how it does so, and giving

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<sup>2</sup> Three of the seven members of the Committee (Convener Joe FitzPatrick MSP, Karen Adam MSP and Pam Duncan-Glancy MSP) were CPG members. Until 31 May, four Committee members were in the CPG: from that point Rachael Hamilton MSP joined the Committee, replacing CPG member Alexander Stewart MSP. The following CPG members gave evidence at Stage One: Scottish Trans Alliance (STA), LGBT Youth Scotland, Stonewall Scotland, LeapSports, Engender and Dr Kevin Guyan. The STA is part of the Equality Network, which provides the secretariat to the CPG. None of the relevant members or witnesses referred to their connection to the CPG during the proceedings.



volunteer groups a reasonable amount of time to interact to provide any material they wish.

### Conclusion

At the start of the Bill process we observed that the Scottish Government had handled questions raised in relation to the Bill, including those related to the interaction with the Equality Act, poorly. We hoped that the Parliament's scrutiny would make up for this. The Committee's approach instead amplified the faults in the government process.

The choices made by the Committee in the handling of the Bill reduced the quality and usefulness of its scrutiny. The Committee became a contributor and key player in increasing tensions around this topic.

The Committee's questionable approach to issues related to the Equality Act continues. In its current inquiry into the PSED, the deadline for receiving written submissions fell less than two working days before the start of oral evidence, and witnesses were narrowly chosen.

We are concerned that those leading the Committee now wish to approach the Supreme Court judgment in a similar way. If the Committee is considering taking a critical line in relation to the judgment, it should be mindful that it has taken this ruling to bear out its majority position, namely that the interaction of the Equality Act and the Gender Recognition Act is a non-issue.

The Committee's failure to discharge its responsibilities properly in 2022 should not be repeated in its handling of the Supreme Court judgment. We are concerned that the letters sent on Thursday evening do not bode well for how some members plan to use their platform on the Committee in the weeks ahead. Nor does behaviour now [reported by the Deputy Convener this weekend](#), who has referred to "bigotry, prejudice and hatred" coming from the Supreme Court.

In our view, the way this Committee is approaching the issues here now presents an urgent reputational issue for the Parliament as a whole. For that reason, we are copying this letter to the Presiding Officer in her capacity as the chair of the Conveners' Group.

The people of Scotland are entitled to expect of any committee of the Scottish Parliament a serious, legally well-founded and evidence-based response to the judgment, which fully respects that women have rights based, as the Supreme Court has now left in no doubt, on their sex.

Yours sincerely,

Dr Kath Murray  
Dr Lucy HunterBlackburn  
Lisa Mackenzie